

1 you say that's negotiated when the agreement  
2 is signed?

3 THE WITNESS: Correct.

4 JUDGE SIPPEL: The carriage  
5 agreement is signed?

6 THE WITNESS: Correct.

7 JUDGE SIPPEL: And that's probably  
8 a standard clause in these contracts?

9 THE WITNESS: Correct.

10 JUDGE SIPPEL: All right, thank  
11 you.

12 BY MR. CARROLL:

13 Q Now did you consider, in  
14 evaluating the proposal that Tennis Channel  
15 has made to get greater distribution, did you  
16 consider the possibility that there might be  
17 a benefit to Comcast, in the form of  
18 additional ad avail minutes?

19 A Not really. The Comcast  
20 advertising sales force has lots of  
21 advertising inventory that it doesn't use  
22 today. So it wouldn't be a big driver to get

1 access to additional advertising inventory.  
2 We already have more than we're really able to  
3 sell effectively.

4 Q I see, and the advertising that  
5 you get for ad avails, is that national  
6 advertising or is that limited to local  
7 advertising?

8 A We're generally limited to selling  
9 it to local advertisers, as opposed to  
10 national advertisers.

11 Q Are you comfortable with the  
12 decision you've come to, putting aside the  
13 litigation and having to sit in the chair  
14 right now, are you comfortable with your  
15 evaluation of the proposal and the decision  
16 you just explained?

17 A Absolutely.

18 Q Now is your decision that you made  
19 mean that you're never open to the possibility  
20 of giving greater distribution to Tennis  
21 Channel?

22 A No. I'd be very open to that kind

1 of a discussion. If there's a value  
2 proposition that works for both parties and  
3 crates value for both parties, I'd be more  
4 than happy to have that discussion.

5 In addition, if the landscape in  
6 the marketplace changes. If there's a  
7 material amount of consumer demand that has  
8 not existed to date, that would change my  
9 views on Tennis.

10 Q So it's not an absolute forever  
11 decision in your mind?

12 A No.

13 Q Have you had it, since you've come  
14 onto the job, have you had any discussions  
15 directly with Mr. Solomon at Tennis Channel or  
16 anybody at Tennis Channel about ways of  
17 working this out, and aside from anything  
18 that's been handled as between the lawyers on  
19 the two sides?

20 A No. Unfortunately due to this  
21 process, it doesn't really seem to have been  
22 possible, although I'd be happy to do it.

1 MR. CARROLL: I think, Your Honor,  
2 the only remaining thing I wanted to do was  
3 this is already in the record, just have the  
4 witness identify, hopefully without any  
5 objection, for the record, Comcast Exhibit  
6 120, which is a copy of the affiliation  
7 agreement between Charter and Tennis Channel,  
8 just the agreement itself.

9 (Whereupon, the document referred  
10 to was marked for identification  
11 as Comcast Exhibit 120.)

12 MR. PHILLIPS: That's fine.

13 MR. CARROLL: Okay.

14 JUDGE SIPPEL: What is it, 120?

15 MR. CARROLL: Comcast Exhibit 120.

16 May I approach?

17 JUDGE SIPPEL: Please do.

18 MR. CARROLL: Thank you.

19 JUDGE SIPPEL: Thank you very  
20 much. Now is this going to get made available  
21 to the public with appropriate redacts, or  
22 does it need a redact? Well, tell me -- well,

1 here you've got a lot of redacting right  
2 there.

3 MR. CARROLL: Well, I think this  
4 is the redacted version.

5 JUDGE SIPPEL: So that can be made  
6 available to the press?

7 MR. CARROLL: Am I right or am I  
8 wrong?

9 MR. PHILLIPS: I haven't looked at  
10 it.

11 MR. CARROLL: Oh, all right.  
12 We'll have to --

13 MR. PHILLIPS: Hand it to me now.

14 BY MR. CARROLL:

15 Q All right, and I'm not going to go  
16 into any details. It's merely for the record.  
17 Can you identify Comcast Exhibit 120 as a copy  
18 of the affiliation agreement that existed  
19 between Charter and Tennis Channel?

20 A That is correct.

21 Q Okay.

22 JUDGE SIPPEL: No, sorry to

1 interrupt. There's one phase of this lead-in  
2 testimony that I want to clear up, for me,  
3 just for my purposes. I've got a three-legged  
4 stool here, isn't that something, to try to  
5 explain to myself where these costs are when  
6 you move, when the decision is made -- let me  
7 --

8 Well, let's use, this is all  
9 hypothetical now. But when the decision is  
10 made to move Tennis Channel down from the  
11 sports tier to the, what is it called --

12 THE WITNESS: D1.

13 JUDGE SIPPEL: D1, there are costs  
14 in connection with licensing fees, is the  
15 first one.

16 THE WITNESS: Correct.

17 JUDGE SIPPEL: Now without getting  
18 into numbers again, how do those licensing  
19 fees work? Who's the payer and who's the  
20 receiver?

21 THE WITNESS: So the cable  
22 operator pays the network the licensing fees.

1 JUDGE SIPPEL: The Tennis Channel  
2 in this case.

3 THE WITNESS: And they pay them on  
4 a per subscriber basis each month.

5 JUDGE SIPPEL: I see. So if you  
6 have 20 million subscribers, then the  
7 licensing fee is going to be based on 20  
8 million.

9 THE WITNESS: Exactly.

10 JUDGE SIPPEL: Whereas if you have  
11 ten million, it's going to be based on ten  
12 million and do the math. It's easy, right?

13 THE WITNESS: Exactly. That's  
14 exactly right.

15 JUDGE SIPPEL: Then secondly, as  
16 you talked, you said that it detracts from the  
17 value of the sports tier. In other words,  
18 you're taking from up here, you're putting it  
19 down here, and you're losing value up there  
20 when you take it down?

21 THE WITNESS: Correct.

22 JUDGE SIPPEL: How do you measure

1 that in terms of what, you know, how much  
2 value do you lose by that?

3 THE WITNESS: It's difficult to  
4 measure. You do it based on what consumer  
5 feedback that you get, or if the number of  
6 subscribers to the sports tier goes down, that  
7 would be an indication.

8 JUDGE SIPPEL: Do you have to  
9 include that number in your 10K disclosures?

10 THE WITNESS: The number of  
11 subscribers on the system.

12 JUDGE SIPPEL: No, no, no. What  
13 these -- if you had the transaction, the year  
14 in which the transaction was completed. The  
15 Tennis Channel comes down to the D1, D-2, you  
16 have to report something happened, or maybe  
17 you don't? Do you have to report that as  
18 significant event in your 10K?

19 THE WITNESS: I'm not sure, but I  
20 don't think so.

21 JUDGE SIPPEL: That would probably  
22 -- I mean would it be, would your accounting,

1 would your accounting statements reflect it in  
2 some way? It might be -- well, let me just ask  
3 it that way.

4 THE WITNESS: It would be built  
5 into the expenses, yes.

6 JUDGE SIPPEL: It would be built  
7 into --

8 THE WITNESS: So it would be  
9 reflected in the P&L, yes.

10 JUDGE SIPPEL: So it could be --  
11 well, all right, and that's -- and as far as  
12 you know, that would be the measures that  
13 would be used when you put a composite  
14 together for that expense. It's going to be  
15 the increased licensing fees.

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: And it's going to  
18 be the loss of value, much more difficult to  
19 calculate, but nonetheless, that your tier,  
20 your other tier is going to realize.

21 THE WITNESS: You know, what's  
22 very difficult to measure is if you take it

1 out of the sports tier and put it into the D1  
2 tier, it's very difficult to measure whether  
3 or not there's any impact, in terms of  
4 acquiring or retaining customers to the cable  
5 operator or to that tier.

6 You know, there's so many other  
7 networks in there. It's very difficult to  
8 isolate. So really what you're doing is  
9 you're just creating more expense by  
10 increasing the number of subscribers upon  
11 which you're paying those licenses.

12 JUDGE SIPPEL: Well, I don't think  
13 you quite understood my question. My question  
14 is you detract, we lost a Tennis Channel from  
15 the sports tier. So instead of an offering of  
16 let's say 12, you've got an offering now of  
17 11.

18 THE WITNESS: Correct.

19 JUDGE SIPPEL: And a loss of  
20 tennis to the broader tier. So that subtracts  
21 -- as I heard you the first time around, you  
22 have to subtract the value of that loss from

1 the third tier, to get a current evaluation of  
2 the third tier?

3 THE WITNESS: Correct. Losing the  
4 Tennis Channel from that tier would take value  
5 away from the sports tier, that is correct.

6 JUDGE SIPPEL: That's all I was  
7 asking.

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: And that number,  
10 however it's calculated, would end up being  
11 included in all the expenses associated with  
12 that transaction, for your internal accounting  
13 purposes. Well, not only for your internal  
14 accounting, but ultimately your public P&L  
15 statement?

16 THE WITNESS: Well, I think the  
17 reflection of the loss of value in the sports  
18 tier, if it happened, would be a reduction of  
19 revenue. You'd have less subscribers on the  
20 sports tier.

21 JUDGE SIPPEL: That would be  
22 fairly easy to measure then, wouldn't it?

1 THE WITNESS: Yes, sure.

2 JUDGE SIPPEL: Okay. Now you  
3 might be looking around for a replacement, but  
4 that's another situation.

5 THE WITNESS: Correct.

6 JUDGE SIPPEL: Now okay. Now then  
7 the third leg on this stool is the customer.  
8 The customers, and it's going to be customers  
9 that are going to -- first of all, there are  
10 customers that are buying into the third tier,  
11 for whatever reason, and it might be for the  
12 reason of the Tennis Channel. I mean it might  
13 be.

14 But it could be for any number of  
15 reasons. The point is that they've gotten  
16 used to seeing the Tennis Channel. Maybe they  
17 like the soccer, but they've gotten used to  
18 watching the tennis and all of the sudden it  
19 disappears on them.

20 So does that raise a concern, or  
21 do you have to explain to them? You have to  
22 explain to the subscribers to the third tier

1 what's going on?

2 THE WITNESS: You would have  
3 notify subscribers if you're pulling it out of  
4 the sports tier. You know, in most cases, the  
5 subscribers to the sports tier would probably  
6 have the lower tiers.

7 JUDGE SIPPEL: That's what I was  
8 just -- I would assume that, too. Yes. I was  
9 going to assume that in the question. But  
10 okay. So that, that sort of ges taken care  
11 of.

12 THE WITNESS: Yes.

13 JUDGE SIPPEL: Now but however,  
14 the customers for the -- the non-third tier  
15 customers that you have in the second tier,  
16 are going to get a new program, and they have  
17 to be told also, right?

18 THE WITNESS: I don't think in  
19 that case you have to notify them. I think  
20 you just have to notify them when you take it  
21 away.

22 JUDGE SIPPEL: Well, are they

1 going to realize -- we've heard some testimony  
2 on this. But are the customers that are  
3 paying -- let's say they're buying in for \$30  
4 a month.

5 At some point, are they going to  
6 get an increase in that \$30, maybe to 31, 32  
7 as a result, to cover your costs of the  
8 increase in licensing fees? Somehow or other,  
9 you have to make that up.

10 THE WITNESS: It's unlikely that  
11 there would be a direct correlation between a  
12 price increase on that tier and, you know,  
13 specifically to cover the increase in fees for  
14 the Tennis Channel.

15 JUDGE SIPPEL: Well, when you tell  
16 them that they're getting a new channel --  
17 well, you say you don't really have to tell  
18 them, but if they called up, at some point  
19 you're going to have to change your whatever  
20 that printed things that you give people,  
21 here's what we're offering.

22 THE WITNESS: Yes.

1 JUDGE SIPPEL: Do you have to  
2 disclose in some way that well, forget it.  
3 I'm not going to ask that question. I think  
4 you've answered it for my satisfaction.

5 THE WITNESS: And maybe just to  
6 answer your question, would you raise the  
7 price to cover the increased license fees?

8 JUDGE SIPPEL: Exactly.

9 THE WITNESS: Yes. You can't just  
10 raise the price. The competition is very  
11 fierce, with our satellite competitors and our  
12 telco competitors. So you can't just, you  
13 know, just because you're giving somebody more  
14 programming, you can't just raise the price.  
15 So that's not to say it necessarily a direct -  
16 -

17 JUDGE SIPPEL: But there has to be  
18 some way that you're going to recover that  
19 increase in licensing fees somehow?

20 THE WITNESS: Well, that's what  
21 would make it a good business proposition to  
22 me. But I don't see that I would have the

1 flexibility to just charge the customers more.  
2 So no. My view is that Comcast would have to  
3 absorb all that incremental expense for no  
4 benefit.

5 JUDGE SIPPEL: No additional  
6 revenue benefit.

7 THE WITNESS: That's the problem.

8 JUDGE SIPPEL: My word. Isn't  
9 free enterprise something? All right. I'm  
10 finished. Thank you.

11 BY MR. CARROLL:

12 Q Good questions, Your Honor. Just  
13 one or two follow-ups on that. Could you  
14 follow up and explain a little bit, the issue  
15 His Honor was asking about relating to costs  
16 at the, in this case the D1 tier level.

17 Talk about and explain from your  
18 perspective the importance of cost these days,  
19 and how a cable operator such as yourself  
20 deals with those costs, and how you make  
21 decisions about how much you can pass onto  
22 subscribers, and how much just drops as a loss

1 to your operations?

2 A Right. So escalating programming  
3 costs is one of the biggest challenges facing  
4 the pay TV industry. It was true at Charter;  
5 it's true at Comcast, and they are currently  
6 on a path where they're increasing at a higher  
7 rate per year than we are able to, as  
8 operators, increase the fees to customers per  
9 year.

10 So our margins, as a result, are  
11 getting squeezed or are shrinking, because we  
12 cannot pass on all of the increases in  
13 programming costs to our customers.

14 Q And could you explain to us how  
15 the sports tier relates to that issue? Does  
16 the sports tier address that cost issue in any  
17 way, from your perspective?

18 A It's useful to be able to satisfy  
19 consumer demand with multiple different  
20 packages of programming. The sports tier is  
21 a great tier to put programming for sports  
22 enthusiasts, where you can have a better

1 correlation between, you know, charging them  
2 for it and the expenses, as opposed to just  
3 giving sports to everybody, even if they're  
4 sort of more niche sports, and making  
5 everybody pay for them.

6 So it's a critical component to  
7 providing choice to consumers, and getting the  
8 associated revenue to cover the costs of that  
9 programming.

10 Q The associated revenue associated  
11 with the fees you can charge at the sports  
12 tier level?

13 A Correct.

14 Q And if you charge the fees at the  
15 sports tier level, that increase in fees, is  
16 it only -- does it only have to be paid by  
17 people who subscribe to the sports tier, or is  
18 there any way that a price at the sports tier  
19 gets imposed on other subscribers? Does that  
20 question make sense?

21 A Maybe ask that one more time.

22 Q Okay. At the sports tier, the

1 price that you charge at the sports tier, does  
2 that impose any costs on the D1 levels  
3 underneath, or is that price only absorbed by  
4 subscribers at the sports tier level?

5 A So Comcast only incurs expenses on  
6 the sports tier for subscribers that subscribe  
7 to that tier. So no, it does not impact the  
8 expenses of other tiers.

9 Q Okay, and could you contrast that  
10 for us with respect to the D1 level. If  
11 you're at the lower level of more general  
12 distribution, how are the -- if you do pass  
13 costs on, are costs -- how are they  
14 distributed to the subscriber as if they are  
15 passed on?

16 A I'm not even sure I would use the  
17 term "passed on." The D1 tier has networks in  
18 it, does networks have fees associated with  
19 them which we pay, and we have to pay those  
20 expenses, regardless of our ability to raise  
21 the prices on that tier for consumers.

22 So they sort of operate

1 independently. Expenses go up and we try to  
2 have revenue go up in tandem. But revenue's  
3 not going up as fast as the expenses are in  
4 that tier.

5 Q And Comcast is a public company?

6 A It is.

7 Q With shareholders?

8 A Yes.

9 Q And do you feel any obligation to  
10 your shareholders with respect to costs and  
11 expenses, and if so, explain that?

12 A Absolutely. It's my job to get  
13 all the content to satisfy consumer demand at  
14 the best prices possible, to optimize the  
15 value in the business for the shareholders.

16 Q Do you think it's part of your job  
17 to lose money for your shareholders?

18 A Absolutely not.

19 MR. CARROLL: Your Honor.

20 JUDGE SIPPEL: You'll put your job  
21 on the line. Let me just follow up on one  
22 thing.

1 MR. CARROLL: Sure.

2 JUDGE SIPPEL: I'm just going to  
3 ask basically the same question that Mr.  
4 Carroll did in a little different way. Do the  
5 D1 and D2 levels, do they absorb any of the  
6 costs or expenses of the sports channel, of  
7 the sport load, the third tier, which is the  
8 sport tier?

9 THE WITNESS: No.

10 JUDGE SIPPEL: Zero.

11 THE WITNESS: That's generally  
12 accurate, yes.

13 JUDGE SIPPEL: Okay.

14 BY MR. CARROLL:

15 Q And is that because, sir, the  
16 people who -- only the people who subscribe to  
17 the sports tier, that third tier level, are  
18 the ones who are charged for that service?

19 A Yes, and the fees that Comcast  
20 pays for the programming on the sports tier is  
21 directly related to the customers subscribing  
22 to the sports tier. So if I have, you know,

1 one customer in the sports tier, then I pay  
2 the license fees for one customer per sub per  
3 month.

4 JUDGE SIPPEL: I was kind of  
5 thinking about that, in terms of like you'd  
6 have a -- it wouldn't be called a volume  
7 discount, but you've got volume pricing.  
8 Let's say you have printing expenses incident  
9 to all three. Do they bundle those?

10 You know, whoever's in charge of  
11 that department, would they be pricing it out  
12 or assessing the costs on a package deal? In  
13 other words, if they can go to a printer and  
14 get a package price, it might include the  
15 third tier price.

16 THE WITNESS: As a general matter,  
17 maybe it's easier to talk about it  
18 specifically with regard to the Tennis  
19 Channel. The fees for the Tennis Channel are  
20 based entirely on the subscribers in the  
21 sports tier, when it's carried in that tier.

22 JUDGE SIPPEL: But they're going

1 to get -- yes. But that, I was going to say,  
2 for the subscribers, that's true. But the  
3 subscribers who are in the tier with the  
4 Tennis Channel are also going to get that  
5 other programming.

6 THE WITNESS: And they're paying  
7 separately for that other programming.

8 JUDGE SIPPEL: Oh, they are?

9 THE WITNESS: Sure.

10 JUDGE SIPPEL: Oh, I'm sorry. I  
11 just misunderstood it. So it's five --  
12 whether it's five dollars --

13 THE WITNESS: You pay for Expanded  
14 Basic.

15 JUDGE SIPPEL: Yes.

16 THE WITNESS: And then so you pay  
17 a fee for that, and then you can pay a fee for  
18 D1, and then you can pay a fee for the sports  
19 tier. So there's incremental fees.

20 JUDGE SIPPEL: Okay. But you  
21 can't -- you can't pay extra for just the  
22 Tennis Channel, can you?

1 THE WITNESS: No. It's not sold  
2 on -- that would be called selling it on an a  
3 la carte basis.

4 JUDGE SIPPEL: Yes. That's what I  
5 was --

6 THE WITNESS: The Tennis Channel  
7 is not sold on an a la carte basis.

8 JUDGE SIPPEL: Well then, okay.  
9 Well then I misinterpreted what you said,  
10 okay. So If you're going to subscribe for the  
11 Tennis Channel, you've got to get the whole  
12 package?

13 THE WITNESS: You have to get the  
14 whole sports tier. Yes, that's correct.

15 JUDGE SIPPEL: And that whole  
16 tier, the expenses for that whole tier, I take  
17 it, are treated as a grouping, for purposes of  
18 paying like, you know, printing, whatever  
19 these big-type expenses are, instead of  
20 breaking them out incrementally?

21 THE WITNESS: For understanding  
22 the revenue and expenses of the sports tier,

1 yes. It's all grouped together in the sports  
2 tier, yes.

3 JUDGE SIPPEL: And my question was  
4 that if you've got -- I mean I use that as an  
5 example, disclosing that if Comcast has an  
6 account with one printing, you know, a place  
7 in Scranton, Pennsylvania, and they're going  
8 to bring a lot of business to that printing  
9 company.

10 But they're going to get the good  
11 price based on not so much on what business  
12 they're sending up to the third tier. It's  
13 going to be that whole conglomerate. So the  
14 third tier is going to get the benefit of  
15 something that's being done down at the other  
16 two tiers, in terms of a pricing, a price cut.  
17 Let's call it that.

18 THE WITNESS: In this case, the  
19 customer?

20 JUDGE SIPPEL: No, I'm talking  
21 about the company.

22 THE WITNESS: I'm not sure I

1 understand.

2 JUDGE SIPPEL: Yes. I might be  
3 getting over my head here.

4 MR. CARROLL: You're not. I think  
5 His Honor is asking this, if I'm following it.  
6 Supposing Comcast is able, because of its  
7 business relations generally, to negotiate a  
8 cheaper price for paper collectively, over all  
9 of its business. How do you allocate that  
10 through to different parts of the business?  
11 Is that what Your Honor was getting at?

12 JUDGE SIPPEL: Or the general  
13 administrative expenses.

14 BY MR. CARROLL:

15 Q Yes. How are those allocated  
16 through to different levels of the business  
17 there.

18 A Yes. I actually don't know how  
19 our accounting unit does that across the  
20 programming tiers.

21 Q Okay.

22 A I really look at them more on a